

Title of policy: Access Validating Agency Appeals Procedure			
Policy statement: This document sets out the procedures for consideration of an appeal made by an Access Validating Agency (AVA) against a recommendation made to the Quality Assurance Agency for Higher Education (QAA) Board by the Access Recognition and Licensing Committee to withdraw an AVA licence.			
Strategic aim of the policy: To safeguard the robustness and fairness of QAA's review and monitoring methods.			
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Link to other policies/procedures and guidelines <ul style="list-style-type: none"> • Access Validating Agency escalation activities • Access Validating Agency (AVA) licence withdrawal procedures • AVA licensing agreement • AVA licensing criteria <p>Please refer to: www.qaa.ac.uk/en/access-to-he/access-to-he-resources https://qaa.moodle.school/</p>			
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V1.0	April 2018	A.Karadia	First published version
V2.0	November 2018	J.Mizon	The policy was updated in November 2018 to align to new risk guidance and escalation activity procedures.
V3.0	September 2018	A.Karadia	Weblinks updated throughout the document.

Access Validating Agency Appeals Procedure

Introduction

1 This procedure applies to licensing judgements made by the Quality Assurance Agency for Higher Education (QAA) in relation to outcomes of Access Validating Agency (AVA) escalation activities (revisit).

2 Details of this procedure (including the AVA licensing conditions and criteria) are available on the Access to HE website.¹

3 This document sets out the procedure for consideration of an AVA's appeal against a recommendation to the QAA Board that an AVA licence should be withdrawn. **This is the only circumstance in which this procedure applies.**

4 All QAA's AVA licensing and escalation activities provide opportunities for an AVA that is subject to review to raise concerns about the process and outcomes of individual review and monitoring events. The operational descriptor for escalation activities outlines the process followed to address such concerns. Where AVA licensing judgements are involved, this process must be completed before a formal appeal can be considered - an appeal should be a last resort option. If, however, the concern(s) cannot be resolved through other means, the following procedures will apply.

5 **Definitions:**

Independent Reviewer: This is a reviewer trained in the methodology of the review being appealed who has had no prior involvement in the review process and has no conflicts of interest with the provider.

Expert Adviser: This is a Review Manager and member of QAA staff who has had no prior involvement in the review being appealed, but who can provide expert advice on the review method and process.

Appeal Panel: Three further Independent Reviewers who will be appointed to consider the evidence in advance of meeting, and then convened in a virtual meeting to discuss the appeal.

Making an appeal

6 QAA distinguishes between complaints and appeals. A complaint is an expression of dissatisfaction with services QAA provides or actions QAA has taken. QAA has a separate complaints procedure. Appeals are specific challenges to judgements reached further to a revisit and are handled through this procedure. For AVAs with provision in Wales, where an appeal submission was made in Welsh, the response will be provided in Welsh.

7 Where an appeal contains matters that properly fall within the complaints procedure, the Governance team, the Independent Reviewer or the Appeal Panel may refer those matters to be considered under the complaints procedure.

8 Appeals must be submitted on the [Access Validating Agency Appeal Submission Form](#)² by the Chief Officer of the AVA concerned, and submitted by email to

¹ www.qaa.ac.uk/en/access-to-he/access-to-he-resources

² www.qaa.ac.uk/reviewing-higher-education/how-to-make-a-complaint/complaints-about-qaa-and-appeals-against-decisions

governance@gaa.ac.uk Oral appeals are not accepted. Appeals made in any format other than on the relevant AVA Appeal Submission Form are not acceptable and will be returned.

9 An appeal must be lodged within one month of the receipt of the revised draft revisit report (that is, the draft to which any amendments have been made following an AVA's request for reconsideration of judgements on the first draft report), as specified in Annex 1. Receipt of an appeal will normally be acknowledged within three working days of receipt.

10 An AVA making an appeal must nominate a contact person for liaison with QAA. QAA will not discuss an appeal with any person other than the Chief Officer of the AVA or the nominated contact person. The QAA contact person will normally be the Head of Governance³ who will keep the AVA informed of progress. All contact with QAA about the submission of an appeal must be made through the Governance team.

11 Normally, the appeal procedure will be completed within three months of receipt of an appeal. In some circumstances it may be necessary to extend this period. During the conduct of an appeal, the AVA's licence will be extended, if necessary, to cover the period of the appeal.

The stage at which an appeal can be considered

12 An appeal can only be considered after all the following stages of a revisit have been completed (see Annex 1 and 2):

- the AVA receives the draft revisit report, including a risk judgement of 'high risk' and a recommendation to the QAA Board to withdraw the AVA licence
- the AVA responds on matters of factual accuracy in the report and, if it considers that factual errors have rendered the outcomes unsound, it requests reconsideration of the outcomes in question, submitting any relevant new evidence (that existed at the time of the review, but which was not seen by the review team) to support its request
- the AVA's response is forwarded to the review team for comment, and the request for reconsideration is notified to the Chair of the Access Recognition and Licensing Committee (ARLC)⁴
- the review team's comments (including comments on the request for reconsideration) are forwarded to the Chair of the ARLC, together with advice from the QAA Officer
- the Chair of the ARLC (acting on behalf of the ARLC) reviews the request for reconsideration, the comments from the review team and advice from the QAA Officer
- the Chair of the ARLC makes a decision to confirm or amend the risk judgement and licensing recommendation (with amendments to the required actions and/or the text of the report, as may be appropriate)
- the QAA Officer forwards the confirmed report and licensing recommendation to the AVA.

³ All references to the Head of Governance in this procedure may include any person nominated to act on their behalf.

⁴ All references to the Chair of the ARLC in this procedure may include any member of the ARLC nominated to act on their behalf.

13 An appeal can only be considered after processes relating to a request for reconsideration, outlined above, have been completed, but before the confirmed report and licensing recommendation is forwarded to the QAA Board.

Appealable judgements and grounds for appeal

14 An appeal may be lodged if, and only if, the ARLC has confirmed a judgement that an AVA is 'high risk' and that a recommendation should be made to the QAA Board that the AVA's licence should be withdrawn.

15 An appeal can be lodged on either or both of the following grounds:

a Procedure

That there was a procedural irregularity in the conduct of the revisit, such that the legitimacy of the decision or decisions reached is called into question. Examples include the review team or the ARLC: failing to carry out agreed procedures (as defined in the current published documentation describing operational procedures, or as may have been agreed in writing separately between QAA and the AVA); reaching decisions that are disproportionate; failing to take account of relevant information or taking account of irrelevant information; or exceeding their powers.

b New material

There is material that was in existence at the time the review team made its decision which, had it been made available before the review had been completed, would have influenced the judgement(s) of the team, and in relation to which there is a good reason for it not having been provided to the review team.

16 The 'good reason' for non-provision requirement under the ground of new material will not be considered satisfied in cases that allege solely that the review team did not specifically ask to see the new material, or that the limitation on upload of documents restricted the provider's ability to present the new material.

17 The AVA should set out clearly and concisely in the [AVA Appeal Submission Form](#) the ways in which it considers the review to be flawed based on the grounds of appeal set out in paragraph 15. In so doing, the AVA should explicitly identify the alleged deficiencies that led to the judgement. The AVA may submit evidence to substantiate its claim, which should be clearly labelled and referenced. The completed AVA Appeal Submission Form and all associated evidence must be submitted by the appeal deadline. It is the AVA's responsibility to ensure that the AVA Appeal Submission Form is completed in a clear and concise fashion and that all relevant evidence is supplied. QAA will process all appeals in the form that they are originally submitted and will not seek any clarification or amplification.

Conflicts of interest

18 The Independent Reviewer, members of the Appeal Panel and Expert Adviser (paragraphs 20, 24 and 26 below) are experienced reviewers or QAA Officers who have had no prior involvement in the review under appeal and are drawn from a list maintained for this purpose.

19 QAA has a robust [conflicts of interest procedure](#)⁵ that applies to anyone engaged in work for QAA. Prior to appointment, Governance will check against its own records and all representation reviewers are asked to confirm that they are not aware of any actual or potential conflicts of interest that could affect their ability to hear the representations

⁵ www.qaa.ac.uk/about-us/how-we're-run/qaa-policies

impartially before they are appointed.

Initial consideration of an appeal

20 Upon receipt of an appeal, QAA will refer it for preliminary consideration by an Independent Reviewer.

21 The Independent Reviewer will consider the revised draft revisit report, the AVA Appeal Submission Form lodged by the AVA, and any submission made by the AVA after the draft report. The Independent Reviewer may seek advice on the operation of this procedure from QAA's Governance team.

22 The Independent Reviewer may reject an appeal, or any part(s) of an appeal, only where they decide there is no realistic prospect of the appeal, or any part(s) of the appeal, being upheld. The Independent Reviewer will outline their reasons for rejecting the appeal or part(s) of the appeal. In all other cases, the Independent Reviewer will refer the appeal or remaining parts of the appeal to the Appeal Panel.

23 Where the Independent Reviewer rejects an appeal or part(s) of an appeal, the AVA will be notified in writing of this decision and the reasons for the appeal or the relevant part(s) thereof being rejected. There is no appeal from, or review of, the Independent Reviewer's decision.

The Appeal Panel

24 Where the Independent Reviewer has referred an appeal to the Appeal Panel, the Governance team will convene an Appeal Panel to consider the appeal. The Appeal Panel will consist of at least two experienced reviewers, one of whom will be invited will act as Chair.

25 The administrative, secretarial and procedural support to the Appeal Panel is provided by QAA Governance Officers, who have no operational involvement in the revisit or any prior involvement in the revisit under appeal.

26 An Expert Adviser will be available to the Appeal Panel to provide guidance on the application of the QAA revisit. The Expert Adviser will be an experienced QAA Reviewer or Officer who has no prior involvement in the revisit under appeal. The Expert Adviser will not receive or consider the documentation constituting the appeal at any stage and will advise only on matters of procedure when requested by the Appeal Panel.

27 The Appeal Panel may, at any stage of the process, seek advice on the operation of this procedure from the Governance team and/or Access Officer, who may, if they consider it necessary, seek external legal advice.

Response to the appeal

28 In order to assist an Appeal Panel in its consideration, the Governance team, acting on the Appeal Panel's behalf, will ask the QAA Officer with responsibility for the revisit (usually the Access Manager) to respond to the appeal on behalf of the ARLC. The QAA Officer will coordinate a response, including comments on any suggestion of procedural deficiency in the conduct of the review and on any other matters raised in the appeal.

29 QAA will make available to the AVA the response received in accordance with paragraph 28 at least 10 working days before the date fixed for the Appeal Panel. The AVA may comment in writing on that response, and those written comments will also be

considered by the Appeal Panel. The AVA's response should be received by the Governance team at least five working days before the date fixed for the Appeal Panel.

30 The Appeal Panel may, at any stage of the process, request that the Governance team obtains further information or clarification from the AVA and/or the QAA Officer. A copy of any such information or clarification shall be provided to the other party, who will have the right to comment on it.

Documents for the Appeal Panel

31 The documents considered by the Appeal Panel will include:

- the revised draft AVA revisit report
- QAA's published documentation relating to the operation of licensing or AVA escalation procedures
- the AVA's appeal
- the QAA Officer's response, as described in paragraph 28
- any comments received from the AVA on the review team's comments, as provided for in paragraph 29.

32 The Appeal Panel will not consider any document that has not been identified to and provided to the AVA in advance of the Appeal Panel meeting to consider the documents. The Head of Governance or their nominee will act as secretary to the appeal panel.

33 The Appeal Panel will normally reach a decision on an appeal at the Panel, without the need for any additional representation. The Appeal Panel may, however, at its absolute discretion, instruct the Governance team to invite senior members of the AVA, and/or members of the review team or ARLC, to a meeting in exceptional circumstances where the Appeal Panel considers that there are issues that require further clarification. The procedure at the meeting will be entirely at the Appeal Panel's discretion. There will be no right to legal representation at such a meeting. Under no other circumstances will the Appeal Panel receive oral representations.

Decisions of the Appeal Panel

34 The Appeal Panel will focus on the process and conclusions that led to the appealable judgements.

35 The Appeal Panel shall uphold the appeal if it concludes, on the balance of probabilities, that:

- there was a procedural irregularity in the conduct of the revisit, such that the legitimacy of the decisions reached is called into question
- and/or there is material that was in existence at the time the review team made its decision which, had it been made available before the revisit had been completed, would have influenced the judgements of the team, and in relation to which there is a good reason for it not having been provided to the review team.

36 Otherwise, the Appeal Panel shall reject the appeal and shall determine that the judgements of the review team shall be confirmed.

37 Where the Appeal Panel upholds the appeal, it may do either of the following:

- set aside the affected revisit (this option will be exercised only where the Appeal

Panel decides that the reason for upholding the appeal is so systemic and serious as to call the validity of the entire review into question)

- set aside any or all affected judgements.

38 In the event that the Appeal Panel sets aside the affected revisit, a new revisit review will be carried out by a new review team, based on a new submission of evidence by the AVA.

39 In the event that the Appeal Panel sets aside affected judgements, the scope of any consequent revisit will be determined by the Access Manager⁶ who will be guided by the following principles.

40 Judgements successfully appealed on procedural grounds will normally result in a new team reviewing existing evidence relating to that judgement.

41 Judgements successfully appealed on the ground of new material will normally result in the existing review team reconsidering the set aside judgement, to take into account the new material presented at appeal.

42 Should a judgement be successfully appealed on the grounds of both procedure and new material, the remedy for successful procedural appeals detailed above will prevail, save that the new team will also take into account the new material presented.

43 The Access Manager will take into consideration any comments made by the Appeal Panel but will define the precise extent and scope of the re-review of the judgements, in order to ensure that it is necessary and proportionate. The Access Manager will be guided by the list of options above but retain the right, if they consider in their opinion that it would be fairer for the AVA, to direct that an entirely new revisit review be carried out by a new review team. The Access Manager's decision is final.

44 The Appeal Panel will give reasons for its decision.

45 The decision of the Appeal Panel is final. There is no appeal from, or review of, the Appeal Panel's decision.

46 The Governance team will communicate the outcome of the Appeal Panel's consideration of an appeal to the Chief Officer of the AVA or nominated contact person, normally within seven working days of the date of the Appeal Panel.

47 If an appeal is rejected, the ARLC's recommendation to withdraw the AVA licence will be forwarded to the QAA Board, and procedures for the withdrawal of the licence will be initiated.

48 Once the AVA has been advised of the Appeal Panel's decision, the appeal procedure is completed.

⁶ References to the Access Manager in this procedure may include any person nominated to act on their behalf.

Annex 1 - Procedures following the completion of a revisit, prior to the lodging of an appeal

Following an Access Validating Agency (AVA) review or licensing visit (including special reviews), a review team's report is considered by QAA's Access Recognition and Licensing Committee (ARLC). On the basis of advice provided by the team, the ARLC: confirms areas for improvement, required actions and features of good practice; makes a judgement about the level of risk; and agrees a recommendation about the status of the AVA's licence to the QAA Board. The type and degree of any shortcomings in relation to the AVA licensing criteria determines the level of risk. The level of risk determines the licensing recommendation and the nature of QAA's monitoring and follow-up:

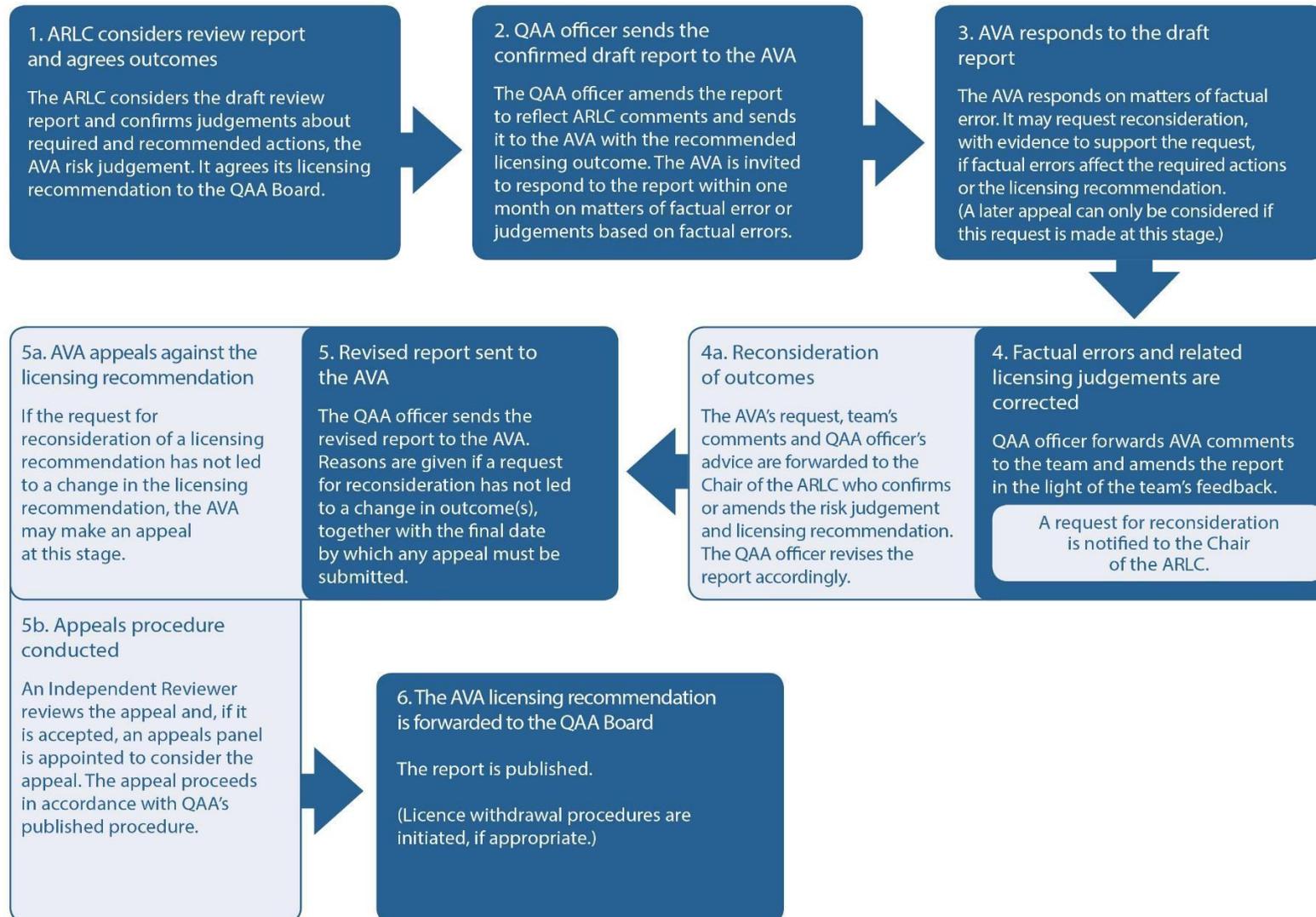
- 'low' and 'medium' risk outcomes lead to the licence being retained but may be subject to further escalation activities
- 'high-risk' outcomes may lead to further escalation activities or to a recommendation to begin procedures for withdrawal of the licence.

The AVA is invited to respond to the draft report and comment on matters of factual accuracy. Ordinarily, such matters are referred to the review team and, after any necessary textual amendments have been made, the licensing recommendation is forwarded to the QAA Board for final endorsement before proceeding to publication. However, if at this stage the AVA considers that any of the outcomes (including the risk judgement and the licensing recommendation) are based on inaccurate or incomplete information, it may request that those outcomes be reconsidered, provided always that it submits evidence to substantiate this request. Any new evidence submitted at this stage must be evidence that was in existence at the time of the review. If the AVA requests a change to the licensing recommendation, the QAA Officer managing the review will refer the request to the Chair of the ARLC. On the basis of the information provided, the Chair will make a judgement about whether any change should be made to the required actions, risk judgement or the licensing recommendation made by the ARLC, or any other actions taken, and will advise QAA accordingly. If the AVA's response suggests that the report should be fundamentally reconsidered, the Chair of the ARLC may refer the report back to the full committee.

Once the AVA's comments have been considered and any amendments made, and any further action consequent on the AVA's request for reconsideration has been taken, a second draft report is prepared and is sent to the AVA. If an appeal is made, it is made at this stage within one month of receipt of the second draft report, and on the basis of this second report.

If the ARLC's decision to recommend withdrawal of a licence has been made as a result of an unsatisfactory response by an AVA to required actions, the appeal must be made within one month of the notification to the AVA of the ARLC's decision to recommend the withdrawal of the licence.

Annex 2 - AVA licensing: requests for reconsideration and appeal procedures



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